



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of: Brad K. Fayette  
Serial No. 09/972,568  
Filing Date: October 5, 2001  
Confirmation No. 5350  
Group Art Unit: 2151  
Examiner: Kamal B. Divecha  
Title: *Method and System for Communicating Among Heterogeneous Systems*

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Date: February 7, 2006

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

The following Pre-Appeal Brief Request for Review ("Request") is being filed in accordance with the provisions set forth in the Official Gazette Notice of July 12, 2005 ("OG Notice"). Pursuant to the OG Notice, this Request is being filed concurrently with a Notice of Appeal. The Applicant respectfully requests reconsideration of the Application in light of the remarks set forth below.

REMARKS

Applicant contends that the rejection of Claims 1-5, 11-17 and 20-22 on prior art grounds contain clear legal and factual deficiencies, as described below. In a Final Office Action dated November 7, 2005, Claims 1-5, 11, 14-15 and 20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,032,197 issued to Birdwell et al. (“*Birdwell*”) in view of U.S. Patent No. 6,088,759 issued to Hasbun et al. (“*Hasbun*”). Applicant requests a finding that these rejections are improper and allowance of these claims.

With respect to Claim 1, a *prima facie* case of obviousness cannot be maintained against Claim 1 because the proposed *Birdwell-Hasbun* combination does not disclose, teach, or suggest each and every one of Claim 1. For example, the proposed combination does not disclose, teach or suggest “allocat[ing] a memory portion from the computer memory, said memory portion having a depth corresponding to said fixed legacy header length.” The Examiner states in the Office Action that this limitation is disclosed at Column 3, lines 3-22 and Column 6, lines 10-21 of *Birdwell*. However, there is no disclosure in these cited passages of a particular depth of the memory, much less that the depth *corresponds to a fixed legacy header length*.

Furthermore, the proposed combination does not disclose, teach, or suggest “push[ing] said header portion of said inbound message onto said memory portion thereby forming a received header, wherein said header portion is truncated to form the received header if a length of said header portion is greater than said depth of said memory portion corresponding to said fixed legacy header length, such truncation causing any header parameters associated with an upgraded protocol to be removed from said header portion.” First, Applicant respectfully disagrees with the Examiner’s statement that the recited upgraded protocol could be interpreted as the legacy protocol. As is clear from this claim (i.e., the use of the two different terms), from its dependent claims (especially Claim 2), and the specification of this application, the legacy protocol is different than the upgraded protocol. Second, although the cited passages in *Birdwell* disclose compressing a header by removing particular “non-changing” header fields, this is not a disclosure of truncating

portions of a header that do not fit with a memory portion. The passages cited from *Birdwell* describe communication of packets in a single protocol – UDP/IP. Although packets communicated using this protocol have differing headers (see, e.g., Column 2, lines 33-47), they use the same protocol. There is no disclosure of header parameters associated with an upgraded protocol, and thus there is no disclosure of the limitations of this claim.

The Examiner goes on to argue that Claim 1 may be interpreted as if the condition “if a length of said header portion is greater than said depth of said memory portion” is not true, which Applicant gathers is why the Examiner states that *Birdwell* discloses this limitation. However, Claim 1 clearly requires a computer program which configures a computer to perform the step of truncating the header portion if this condition is true. This capability is clearly a requirement of the claim and cannot be read out of the claim.

Although arguing this construction of Claim 1, the Examiner also asserts that the above-quoted “pushing” limitation is disclosed in *Hasbun* (at least when the above condition is “true”). However, Applicant is unclear as to how the cited figures of *Hasbun* disclose allocating a memory depth corresponding to a fixed legacy header length, as asserted by the Examiner, or how these figures discloses or suggest truncating the header portion as claimed. As the Examiner recognizes, *Hasbun* does not disclose truncating a header portion, instead it discloses generating an error if there is insufficient space in a memory for an object. Furthermore, it discloses that if such an error is generated, the memory is not allocated (Column 9, lines 35-40). Thus, it actually teaches away from modifying (for example, truncating) what it trying to be put in memory. For this reason, this teaching of *Hasbun* cannot be properly combined with *Birdwell* to disclose “push[ing] said header portion of said inbound message onto said memory portion thereby forming a received header, wherein said header portion is truncated to form the received header if a length of said header portion is greater than said depth of said memory portion corresponding to said fixed legacy header length, such truncation causing any header parameters associated with an upgraded protocol to be removed from said header portion.” Furthermore, as described above, even if these teachings could be combined, *Birdwell* also does not disclose truncating a header portion, and

thus this limitation is not disclosed, taught or suggested by the proposed combination of references.

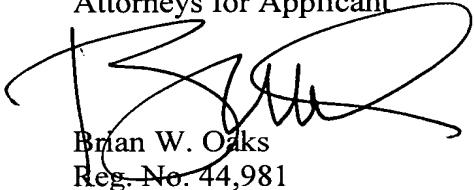
For at least these reasons, Applicant believes Claim 1 to be in condition for allowance. Furthermore, Claims 11, 15 and 20 include similar limitations and thus are allowable for similar reasons. Therefore, Applicant respectfully requests reconsideration and allowance of Claims 1, 11, 15 and 20, as well as the claims that depend from these independent claims.

**CONCLUSION**

As the rejection of Claims 1-5, 11-17 and 20-22 contains clear deficiencies, Applicant respectfully requests a finding of allowance of Claims 1-5, 11-17 and 20-22. If the PTO deems that an interview is appropriate, Applicant would appreciate the opportunity for such an interview. To the extent necessary, the Commissioner is hereby authorized to charge any required fees or credit any overpayments to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

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Date: February 7, 2006

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